

12.735 FEDERAL AND STATE FORFEITURES

Reference:

21 U.S.C. 853 - Federal Criminal Forfeitures
21 U.S.C. 881 - Federal Civil Forfeitures
Ohio Revised Code 2901.01(A)(13) - Definitions
Ohio Revised Code 2925.42 - Ohio Forfeiture Law
Ohio Revised Code 2925.43 - Ohio Forfeiture Law
Ohio Revised Code 2981.03 - Ohio Forfeiture Law
Procedure 12.715 - Property and Evidence: Accountability, Processing, Storage and Release

Definitions:

Seizing officer – is any sworn officer who confiscates property including money, motor vehicles, real property or real estate which will be held for forfeiture.

Purpose:

To ensure the fair and impartial enforcement of search and seizure laws while protecting the individual property rights of citizens.

To provide for uniform and efficient processing of forfeiture applications through the Federal Bureau of Investigation (FBI) and the Hamilton County Prosecutor's Office of seized property.

Policy:

All property seized by or forfeited to the Police Department will be processed by authorized personnel. Department personnel will not seize currency from any citizen absent probable cause to believe such currency is contraband, as defined in the Ohio Revised Code Section 2901.01(A)(13), or evidence of a crime. Department personnel will not use, or condone the use of any bias based profiling in asset seizure and forfeiture efforts.

Information:

Both federal law and the Ohio Revised Code (ORC) provide for forfeiture, to the Police Department, of all property used in and the proceeds gained from the commission of a felony drug offense.

In addition, the ORC provides for forfeiture, to the Police Department, of personal property and money considered contraband because of its use in any offense or a conspiracy to commit any offense.

Motor vehicles are only forfeitable if used in a felony offense. However, motor vehicles can be ordered forfeited, by Municipal Court, by an agreed order of forfeiture in connection with a plea arrangement.

Procedure:**A. Initiation of Forfeiture Proceedings:**

1. Officers coming into contact with contraband, money, or a vehicle believed to be subject to forfeiture will seize those items and complete a Form DIS-94, Forfeiture Application.
 - a. The officer must believe sufficient probable cause exists to believe the item has been obtained through or used in the commission of a felony offense.
 - b. If the contraband, money, or vehicle is needed as evidence for court, process as directed in this procedure and Procedure 12.715, Property and Evidence: Accountability, Processing, Storage, and Release.
 - 1) It is the exception, rather than the rule, to hold a vehicle as evidence.
 - 2) In cases involving large amounts of currency, the Prosecutor's Office requests the currency be held as evidence.
 - c. Clearly mark the words "Seized Asset - Forfeiture Case" on all property tags and receipts of property seized for forfeiture proceedings.
2. The seizing officer will submit an approved Form DIS-94 along with copies of the following documents, if applicable, to the Asset Forfeiture Unit (AFU) prior to the completion of the tour of duty.
 - a. Arrest and Investigation Report. (Form 527) (include zip codes for residence address and place of arrest)
 - b. Vice Activity Report (Form 526).
 - c. Evidence Submission Sheet.
 - d. Search warrants and returns.
 - e. Any complaints signed (after notarization).
 - f. A complete list of all property seized which might be subject to forfeiture proceedings.
 - g. If a vehicle is involved, a Form 369, Towing Report, with computer printout showing registration information on vehicle.
 - h. A concise case summary showing:
 - 1) Probable cause for arrest.

- 2) Relationship of seized property to the felony drug offense or involved offense.
- 3) Present location of the property (e.g., Court Property Unit, Impound Unit).
- 4) If the Cincinnati Police Department is the only agency involved in the seizure.
- 5) If there is an additional agency involved in the seizure, the identity of the agency and explaining their participation in the case.

3. Seizure of Currency from Juveniles:

- a. Money seized from juveniles can be considered part of the normal proceedings if accompanied by a petition on the Juvenile Complaint.
 - 1) The Juvenile Complaint will be completed with the following information added: "and request forfeiture of \$--- seized in connection with the offense."
 - a) This information will be entered immediately after the degree of the offense for which the individual is charged.
 - 2) This applies to individuals charged with drug related offenses under ORC Section 2925 and in which money was seized regardless of the amount.
 - a) This does not bypass the need to complete the Forfeiture Application or notify AFU of the seizure.

4. Seizure of Motor Vehicles:

- a. If a vehicle is involved, complete a Form 369 and tow to the Impound Unit. Note in remarks "**Hold For Forfeiture, Do Not Release.**" Also note the owner notified of the seizure, the time, date, method of notification, and the officer who made the notification.
 - 1) The seizing officer must notify the owner within 72 hours of the seizure. Notification may be orally (in person), by telephone, or by certified mail (return receipt requested) to the owner's last known address.
 - 2) If the seizing officer cannot actually contact the owner, reasonable good faith efforts to do so constitute fulfillment of the notice requirement (ORC Section 2933.43(A)(2)). Record all unsuccessful efforts in the case jacket.

b. Motor Vehicles Not in Possession of the Owner at the Time of Seizure:

1) Return motor vehicles and contents to the owner within 72 hours if not in the possession of the owner at the time of seizure unless:

a) The owner is charged with a felony offense or administrative violation that includes the use of the vehicle as an element of the offense (i.e., Permitting Drug Abuse, ORC Section 2925.13).

b) The owner is charged with a felony offense or administrative violation in the actual commission of which the motor vehicle was used.

1] If one of the above applies, the motor vehicle may be retained until the disposition of the criminal or administrative charge.

2] If one of the above does not apply and the seizing officer will need more than 72 hours to complete the investigation:

a] With approval from a supervisor, petition the Court of Common Pleas for an order extending this 72 hour period.

2) Request for Court Order to Extend the 72 Hour Period (ORC Section 2933.43):

NOTE: Use of this section is the exception rather than the rule. The actual number of times this court order is requested should be minimal. The preferred practice is to complete the investigation and return the vehicle to the owner within the 72 hour period.

a) Officers will exercise sound discretion when applying for a court order to extend the 72 hour period. This application procedure is complicated and time consuming. Avoid it if at all possible.

3) Contact AFU on the first available business day after the seizure. If the seizure takes place after normal business hours, send an email to the Central Vice Control Section Commander. Then follow up by phone on the next business day. Provide the following information:

a) A complete description of the vehicle, including make, model, year, color, and VIN number.

b) The name and last known address of the owner.

- c) A statement of why additional time is needed for investigation, inspection, or the gathering of evidence.
 - d) Information concerning the notice given to the owner.
- 4) AFU will contact the Prosecutor's Office, provide them with the above information, and request the Prosecutor's Office petition the court for an order extending the 72 hour period.
 - a) It may be necessary for the seizing officer to appear at the petition hearing to explain why it is necessary to hold the vehicle longer than 72 hours.
 - 1] A Central Vice Control Section supervisor will notify the officer if the officer is required to attend the petition hearing.
- 5) The court must hold a hearing no later than the next court day and notify the owner of the hearing.
 - a) The seizing officer will notify the owner of this hearing.
 - 1] Make notification to the owner's last known address as shown on the Form 527, Form 369, etc.
 - 2] Seizing officer will use the Notice of Hearing (Form 273) to make notification.
 - a] Complete the Proof of Service portion.
 - 3] Fax a copy of the notice to AFU for tracking purposes. Return the original to the prosecutor handling the case. The prosecutor will then file the Proof of Service with the court.
- 6) If the petition is denied by the judge, return the motor vehicle and contents to the owner.
 - a) The Police Department will require proof of ownership or legal possession of the contents from the motor vehicle. An Affidavit, Form 272, from the owner stating lack of knowledge concerning the motor vehicle's use in illegal activities will also be required.
- 7) The Impound Unit, district, or unit which has possession of the vehicle will:
 - a) Execute the Form 272.

1] If a notary is not on duty at the Impound Unit, they will request a supervisor respond to the Impound Unit to notarize the affidavit.

b) Release the vehicle to the owner.

c) File the Form 272 with the Form 369 and mail a copy to AFU for tracking purposes.

B. AFU Responsibilities:

1. Asset Forfeiture personnel will be recalled on all seizures of currency or property exceeding \$10,000 in value. Seizures involving Regional Narcotics Unit personnel are exempt for the recall provision.
2. Determine whether the property is subject to forfeiture based upon the following minimum guidelines and the facts of the particular case:
 - a. U.S. Currency - \$200.00.
 - b. Vehicles - \$1,000.00.
3. Determine which agency (FBI or Hamilton County Prosecutor's Office) will process the forfeiture and forward the necessary information to them.
4. Forward to Hamilton County Prosecutor's Office all forfeiture complaints within the following timelines; "Mobile Instrumentalities", motor vehicles, water craft, personal or business/government records, within 15 days of the seizure. All other forfeiture complaints must be received within 45 days of the seizure.
5. Secure a certified copy of auto titles at the Auto Title Department, County Administration Building, 1001 Main Street, Cincinnati, Ohio, 45202.
6. Act as liaison between the Department and the processing agency.
7. Track all cases to provide the Department with information on the status of forfeiture cases.

C. Distribution of Property Forfeited to the Police Department:

1. The FBI or the Hamilton County Prosecutor's Office will notify AFU when the Police Department will receive forfeited property. AFU will:
 - a. Respond to the Court Property Unit (CPU) and provide them with a copy of the court order.
 - b. Sign a Form 272 for property received and transfer/deposit cash with the City Treasurer.
 - c. Forward appropriate documentation to the Fiscal and Budget Section with the amount of deposit.

- d. Notify Evidence/Property Management Section if the forfeiture involves motor vehicles or other property.
 - 1) Evidence/Property Management Section will assign motor vehicles or other property to various units throughout the Police Department.
- 2. If the Police Chief chooses to sell forfeited property rather than keep it for use by the Department, Evidence/Property Management Section will:
 - a. Arrange for the sale of the property.
 - b. Forward the proceeds of the sale to the Fiscal and Budget Section for deposit in the forfeiture account.
 - c. Notify AFU which property is sold and of the proceeds received from the sale.
- D. Disposition of Money Seized for Forfeiture:
 - 1. If, after review of the Form DIS-94 by AFU and/or the appropriate prosecutor, a decision is made to adopt the case for forfeiture, the AFU will assume responsibility for release of the money.
 - 2. If, after review of the Form DIS-94 by AFU and/or the appropriate prosecutor, no connection is found between the money and any illegal activity, the AFU will notify the seizing officer no forfeiture action will be initiated against the seized money.
 - a. If the seized money is not needed as evidence in any other civil or criminal proceeding, the seizing officer will contact the Court Property Unit and authorize the release of the money to the defendant or his authorized representative.
 - b. The seizing officer will then notify the defendant to claim the money at the Court Property Unit.